



Transgender Victoria
100 Drummond St
Carlton VIC 3053
tg.org.au

1 September 2021

Dear Ms Patten,

Inquiry into Victoria's Criminal Justice System

Thank you for chairing this important inquiry, which provides our community with an opportunity to consider how we can make Victoria's legal system fairer for all. We are concerned about the rising rates of incarceration here in Victoria, which disproportionately impacts many marginalised communities and Aboriginal and Zenadth Kes/Torres Strait Islander people in particular.

Our submission goes to Terms of Reference 3:

(3) an examination of how to ensure that judges and magistrates have appropriate knowledge and expertise when sentencing and dealing with offenders, including an understanding of recidivism and the causes of crime.

About us

As you may know, Transgender Victoria is Victoria's leading body for trans and gender diverse advocacy. We work to achieve justice, equity and inclusive service provision for trans and gender diverse people, their partners, families and friends. Between 2019 and 2021 we partnered with St Kilda Legal Service to deliver the Roberta Perkins Law Project, a specialist pilot project to address the legal needs of the trans and gender diverse community. Through this work, we have developed institutional knowledge about the legal needs of the LGBTIQ+ community in general and the trans and gender diverse community in particular.



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LGBTIQ+ criminal justice issues

It has been recognised by the Victorian government that LGBTIQ+ people have complex and unique legal needs, which are compounded by barriers to accessing justice.¹ Systemic discrimination such as transphobia can make us more likely to be both victims and defendants in criminal complaints.² Unfortunately, many members of our community have experienced both intentional and unintentional discriminatory treatment from judges and magistrates during sentencing. In particular, there has been a lack of awareness of the impact of sentencing transgender women to custodial sentences which are ultimately served in men's prisons. These issues are described in some detail in the LGBTIQ Legal Service's 2020 Legal Needs Analysis.³ At page 19, this report notes the mental health impact of being placed in a single sex prison environment that does not accord with a person's gender identity.⁴ It also highlights the difficulty many trans and gender diverse people experience in accessing gender-affirming healthcare while incarcerated.⁵ Furthermore, it notes the significant additional vulnerability that the trans and gender diverse community experience have to poor mental health and suicidality, which is exacerbated significantly by incarceration.⁶ The report notes the disproportionate likelihood of trans and gender diverse people experiencing sexual assault in prisons, both from other prisoners and guards.⁷

¹ Law Council of Australia Justice Project, LGBTI+ People Final Report (August 2018) and Victoria State Government, Access to Justice Review Report and Recommendations (August 2016)

² Victoria State Government, Access to Justice Review Report and Recommendations (August 2016), p 57 and Kaye Bradshaw and Ian Seal, National LGBTIQ+ Community Impact Project: Down the slippery slope to full equality for all, Collective Impact and Three for All Foundation (2018), p 17

³ <https://lgbtiqlegal.org.au/wp-content/uploads/2020/07/LGBTIQ-Legal-Needs-Analysis.pdf>

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Dr Jess Rodgers, Dr Nicole Asquith, Dr Angela Dwyer, Cisnormativity, criminalisation, vulnerability: Transgender people in prisons', TILES Briefing Paper (2017)



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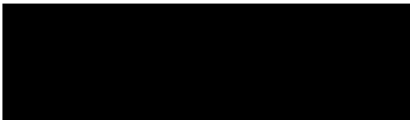
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It is our submission that all judges and magistrates presiding over criminal cases in Victoria where there is a risk of imprisonment be required to undergo LGBTIQ+ inclusive practice training. This specialist training should highlight the particular social and legal issues faced by our community as well as the significant additional risk of psychological and physical harm faced by the incarceration of trans and gender diverse people in Victorian prisons.

It is our hope that this small step will go some way to assist judges and magistrates to deal with LGBTIQ+ victims, defendants and witnesses in a respectful and inclusive manner, and to ensure that they give a full consideration of the additional risk factors that trans and gender diverse people face while incarcerated.

We thank you for considering our submission. We welcome further dialogue around the legal and social issues faced by the LGBTIQ+ community and trans and gender diverse community here in Victoria.

Yours sincerely,



Sam Elkin
Transgender Victoria Committee Member



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